



**BILLING CODE [3510–33–P]**

**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Parts 738, 740, and 746**

**[Docket No. 150302205-5205-01]**

**[RIN 0694–AG54]**

**Russian Sanctions: Revisions and Clarifications for Licensing Policy for the Crimea  
Region of Ukraine**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Industry and Security (BIS) issues this final rule to amend the Export Administration Regulations (EAR) to facilitate Internet-based communications with

persons in the Crimea region of Ukraine. This final rule allows exports or reexports without a license to the Crimea region of Ukraine of software that is necessary to enable the exchange of personal communications over the Internet, provided that such software is designated EAR99, or is classified as mass market software under Export Control Classification Number (ECCN) 5D992.c of the EAR, and provided further that such software is widely available to the public at no cost to the user. This final rule is being published simultaneously with the Department of the Treasury's Office of Foreign Assets Control (OFAC) issuance of General License No. 9, which authorizes the export or reexport from the United States or by U.S. persons to the Crimea region of Ukraine of certain services and software incident to the exchange of personal communications over the Internet. This action is consistent with the U.S. Government's policy to promote personal communications between the people in Crimea and the outside world.

Lastly, this final rule makes clarifications to the EAR with respect to the addition of the Crimea region of Ukraine provisions in a final rule published on January, 29, 2015, to the EAR. These clarifications are in response to requests that BIS received for guidance on applying these provisions.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Eileen Albanese, Director, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482-0092, Fax: (202) 482-482-3355, E-mail:

[rp2@bis.doc.gov](mailto:rp2@bis.doc.gov). For emails, include “Russia” in the subject line.

**SUPPLEMENTARY INFORMATION:** On January 29, 2015, the Bureau of Industry and Security (BIS) published the final rule Russian Sanctions: Licensing Policy for the Crimea Region of Ukraine (80 FR 4776) (hereinafter the “January 29 rule”). The January 29 rule imposed additional sanctions that implemented U.S. policy toward Russia.

Specifically, the January 29 rule imposed a license requirement for the export and reexport to the Crimea region of Ukraine, and the transfer within the Crimea region of Ukraine, of all items subject to the EAR, other than food and medicine designated as EAR99. The January 29 rule also added other provisions specific to the Crimea region of Ukraine. This action was consistent with the goals and objectives of Executive Order 13685.

#### *Background for Executive Order 13685*

This Order took additional steps to address the national emergency declared in Executive Order 13660 of March 6, 2014 (as expanded by Executive Order 13661 of March 16, 2014 and Executive Order 13662 of March 20, 2014), finding that the actions and policies of the Government of the Russian Federation with respect to Ukraine – including the deployment of Russian Federation military forces in the Crimea region of Ukraine – undermine democratic processes and institutions in Ukraine; threaten its peace, security, stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets, and thereby constitute an unusual and extraordinary threat to the national security and foreign policy of the United States.

In part, Executive Order 13685 prohibits certain transactions with respect to the Crimea region of Ukraine, including the export, reexport, sale or supply, directly or indirectly, from the

United States, or by a U.S. person, of any goods, services or technology to the Crimea region of Ukraine. Under Section 10 of Executive Order 13685, all agencies of the United States Government are directed to take all appropriate measures within their authority to carry out the provisions of the Order.

*Permitted exports and reexports of certain software to the Crimea region of Ukraine*

This final rule published today makes additional changes to the EAR for the Crimea region of Ukraine. Specifically, in § 746.6, this final rule revises paragraph (a) (license requirements) to add an additional sentence that allows exports or reexports without a license to the Crimea region of Ukraine and transfers (in-country) within the Crimean region of Ukraine of certain software (described further below) that is necessary to enable the exchange of personal communications over the Internet.

This change to the license requirements, in addition to relieving a regulatory burden on exporters, reexporters, and transferors of such software, may also facilitate Internet-based communication between people located in the Crimea region of Ukraine and other people around the world. Facilitating such Internet-based communication with the people located in the Crimea region of Ukraine is in the United States' national security and foreign policy interests because it helps the people of the Crimea region of Ukraine communicate with the outside world. Persons in the Crimea region of Ukraine may use such Internet-based communication to describe their situation directly and counter any false messages being propagated by those currently exercising control over the Crimea region of Ukraine.

By creating an opportunity for the people of the Crimea region of Ukraine to draw attention to these issues, this final rule may reduce the ability of Russia, and those acting on

Russia's behalf in the Crimea region of Ukraine, to control the narrative of local events. In addition, creating an opportunity for people in the Crimea region of Ukraine to draw attention to these issues may also encourage other countries to join with the United States and other like-minded countries currently imposing sanctions on Russia as a result of their activities in the Crimea region of Ukraine and other parts of eastern Ukraine, which is also in the national security and foreign policy interests of the United States.

This final rule is being published simultaneously with the Department of the Treasury's Office of Foreign Assets Control (OFAC) issuance of General License No. 9 - *Exportation of Certain Services and Software Incident to Internet-Based Communications Authorized*. This general license authorizes the export or reexport, directly or indirectly, from the United States or by U.S. persons to the Crimea region of Ukraine of certain services incident to the exchange of personal communications over the Internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, and blogging, provided that such services are publicly available at no cost to the user, subject to certain exclusions. General License 9 further authorizes, in relevant part, the export or reexport, directly or indirectly, from the United States or by U.S. persons, wherever located, to persons in the Crimea region of Ukraine of software necessary to enable the services described above, provided that such software is designated as EAR99 or is classified as mass market software under ECCN 5D992.c of the EAR, and provided further that such software is widely available to the public at no cost to the user, subject to certain exclusions. See [http://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine\\_gl9.pdf](http://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine_gl9.pdf) BIS is publishing this rule to make § 746.6(a) of the EAR consistent with OFAC's new general license. This rule revises § 746.6(a) to allow license-free treatment of software that is necessary to enable the exchange of personal

communications over the Internet only if such software is designated EAR99 or is classified as mass market software under ECCN 5D992.c of the EAR, and provided further that such software is widely available to the public at no cost to the user.

*Other Clarifications to the EAR for the Crimea region of Ukraine*

In addition to the changes described above, this final rule also makes clarifications to the EAR with respect to the addition of the Crimea region of Ukraine provisions to the EAR. These clarifications are in response to requests that BIS received for guidance on applying these provisions. These clarifications do not change policy as it relates to the Crimea region of Ukraine provisions added to the EAR in the January 29 rule, but rather provide guidance on how BIS interprets them. These questions primarily arise because Crimea is not a country, so the public had questions in regards to how to apply certain EAR provisions that are generally tied to countries when they involve the Crimea region of Ukraine.

*New footnote to clarify application of Country Groups for Crimea region of Ukraine.*

In Supplement No. 1 to part 740 - Country Groups, this final rule adds a footnote 3 to the entry for Ukraine. The new footnote clarifies that for purposes of the Country Group provisions under the EAR, the Crimea region of Ukraine uses the same Country Group designations as the country of Ukraine. This is because the Crimea region of Ukraine is not a country. The Country Groups are also closely tied to the use of license exceptions, so the new footnote also clarifies that the only license exceptions that may be used for the Crimea region of Ukraine are those specified in § 746.6(c). Similar to footnote 8 that was added to the Commerce Country Chart in Supplement No. 1 to part 738 in the January 29 rule, footnote 3 makes the public aware of the

additional requirements under § 746.6 that apply to the ‘Crimea region of Ukraine,’ including limitations on the use of license exceptions. The new footnote also includes the same definition of ‘Crimea region of Ukraine’ that appears in footnote 8 to the Commerce Country Chart and this rule’s revision to § 746.6.

*New Note to clarify application of deemed exports and deemed reexports for Crimea region of Ukraine.*

In § 746.6 (Crimea region of Ukraine), this final rule adds a paragraph (a)(2) to clarify that for purposes of applying the EAR deemed export and deemed reexport requirements for foreign nationals located in or from the Crimea region of Ukraine, the nationality of the foreign national (as determined by accepted methods, such as looking to the passport or other nationality documents recognized by the United States Government) is what is used for purposes of determining whether a license is required under the EAR. For example, if a foreign national is in the United States and has a Ukrainian passport, the person releasing the technology or software source code would use Ukraine for purposes of determining the EAR license requirements and would not need to determine whether the person was from the Crimea region of Ukraine. For releases of technology in the Crimea region to foreign nationals of any country other than Ukraine, the nationality of the foreign national is used for determining deemed reexport license requirements. For example, a release of technology or software source code to a Russian national located in the Crimea region of Ukraine would use Russia for purposes of determining the EAR license requirements. BIS makes this clarification because of requests received from the public for guidance on how to apply the Crimea region of Ukraine license requirements in the deemed export and deemed reexport contexts. Note that nothing in this rule affects licensing

requirements for the provision of goods and services under the OFAC regulations, 31 CFR parts 500-599.

### **Export Administration Act**

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2014, 79 FR 46959 (August 11, 2014), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

### **Rulemaking Requirements**

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to [Jasmeet\\_K.\\_Seehra@omb.eop.gov](mailto:Jasmeet_K._Seehra@omb.eop.gov), or by fax to (202) 395-7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable to the changes described above under the heading *Permitted exports and reexports of certain software to the Crimea region of Ukraine* because this regulation involves a military or foreign affairs function of the United States. (See 5 U.S.C. 553(a)(1)). BIS implements this rule to advance U.S. policy toward Russia and therefore promote U.S. national security or foreign policy objectives by immediately facilitating Internet-based communications with persons in the

Crimea region of Ukraine. Delay in publication and the rule's effective date to allow for notice and comment would frustrate those objectives. This change to the license requirements, in addition to relieving a regulatory burden of exporters, reexporters and transferors of such software, may also facilitate Internet-based communication between people located in the Crimea region of Ukraine and other people around the world. Facilitating such Internet-based communication with the people located in the Crimea region of Ukraine is in U.S. national security and foreign policy interests because it helps create a potentially uncontrolled access point to the outside world for the people of the Crimea region of Ukraine. They may use such Internet-based communication to highlight their plight and to counter any false messages being propagated by those currently exercising control over the Crimea region of Ukraine. By creating an opportunity for the people of the Crimea region of Ukraine to draw attention to these issues, this final rule may increase pressure on Russia and those acting on Russia's behalf in the Crimea region of Ukraine to stop such activities, or at least to allow a counter version of local events. In addition, creating an opportunity for people in the Crimea region of Ukraine to draw attention to these issues may also encourage other countries to join with the United States and other like-minded countries currently imposing sanctions on Russia as a result of their activities in the Crimea region of Ukraine and other parts of eastern Ukraine, which is also in the national security and foreign policy interests of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

5. The Department finds for the changes described under the heading *Other Clarifications to the EAR for the Crimea region of Ukraine* that there is good cause under 5 U.S.C. 553(b)(3)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because they are unnecessary. These changes included in this final rule are limited to clarifications to what was included in the final rule published on January 29, 2015. These revisions are non-substantive, or are limited to only clarifying the regulations to ensure consistency with the intent of the January 29 rule; therefore, providing an additional opportunity for public comment on these corrections is unnecessary.

In addition, BIS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3) because it will allow the clarifications to go into effect immediately, which will reduce the potential for confusion among the public and make sure all members of the public are aware of how BIS interprets these Crimea region of Ukraine provisions as they relate to other EAR provisions.

## **List of Subjects**

### *15 CFR Part 738*

Exports.

### *15 CFR Part 740*

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

*15 CFR Part 746*

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 738, 740, and 746 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

**PART 738 – [AMENDED]**

1. The authority citation for 15 CFR part 738 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

2. Supplement No. 1 to part 738 is amended by revising footnote 8 to read as follows:

**Supplement No. 1 to Part 738 – Commerce Country Chart**

\*\*\*\*\*

<sup>8</sup> See § 746.6 for additional license requirements for export and reexports to the Crimea region of Ukraine and transfers (in-country) within the Crimea region of Ukraine for all items subject to the EAR, other than food and medicine designated as EAR99 and certain EAR99 or ECCN 5D992.c software for Internet-based communications. The Crimea

region of Ukraine includes the land territory in that region as well as any maritime area over which sovereignty, sovereign rights, or jurisdiction is claimed based on purported annexation of that land territory.

## **PART 740—[AMENDED]**

3. The authority citation for 15 CFR part 740 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

4. Supplement No. 1 to part 740 is amended by:

- a. Adding footnote designation “3” to “Ukraine” in Country Group A; and
- b. Adding footnote 3 to Country Group A to read as follows:

### **Supplement No. 1 to Part 740 – Country Groups**

\*\*\*\*\*

<sup>3</sup> For purposes of this supplement, as well as any other EAR provision that references the Country Groups, the designations for Ukraine also apply to the Crimea region of Ukraine. See § 746.6(c) for an exhaustive listing of license exceptions that are available for the Crimea region of Ukraine. No other EAR license exceptions are available for the Crimea region of Ukraine. The Crimea region of Ukraine includes the land territory in that region as well as any maritime area over which sovereignty, sovereign rights, or jurisdiction is claimed based on purported annexation of that land territory.

**PART 746—[AMENDED]**

5. The authority citation for 15 CFR part 746 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec 1503, Pub. L. 108-11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; Presidential Determination 2003-23 of May 7, 2003, 68 FR 26459, May 16, 2003; Presidential Determination 2007-7 of December 7, 2006, 72 FR 1899 (January 16, 2007); Notice of August 7, 2014, 79 FR 46959 (August 11, 2014); Notice of May 6, 2015, 80 FR 26815 (May 8, 2015).

6. Section 746.6 is amended by revising paragraph (a) to read as follows:

**§ 746.6 Crimea region of Ukraine.**

(a) *License requirements*—(1) *General prohibition.* As authorized by Section 6 of the Export Administration Act of 1979, a license is required to export or reexport any item subject to the EAR to the Crimea region of Ukraine and the transfer within the Crimea region of Ukraine except food and medicine designated as EAR99 or software that is necessary to enable the exchange of personal communications over the Internet (such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, and blogging), provided that such software is designated EAR99 or is classified as mass market software under Export Control Classification Number (ECCN) 5D992.c of the EAR, and provided further that such

software is widely available to the public at no cost to the user. The ‘Crimea region of Ukraine’ includes the land territory in that region as well as any maritime area over which sovereignty, sovereign rights, or jurisdiction is claimed based on purported annexation of that land territory.

(2) For purposes of applying the EAR deemed export and deemed reexport requirements for foreign nationals located in or from the Crimea region of Ukraine, the nationality of the foreign national (as determined by accepted methods, such as looking to the passport or other nationality document(s) recognized by the United States Government) is what is used for purposes of determining whether a license is required for a deemed export or deemed reexport. For any other export, reexport or transfer (in-country), see the license requirements specified in paragraph (a).

\*\*\*\*\*

Dated: May 14, 2015

Eric L. Hirschhorn,

Under Secretary of Commerce for Industry and Security.

**[FR Doc. 2015-12267 Filed: 5/21/2015 08:45 am; Publication Date: 5/22/2015]**